

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>MICHAEL SINNING</b> Floyd County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2008-AFO- <del>26</del>
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TO: Michael Sinning  
1227 Winnebago Road  
Rockford, Iowa 50468

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Michael Sinning for the purpose of resolving violations pertaining to manure applicator violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**  
Michelle Johnson, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street S.W.  
Mason City, Iowa 50401  
Phone: 319/653-2856

**Relating to legal requirements:**  
Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**  
Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

**PAST ENFORCEMENT HISTORY**

1. H.E. Trettin, Inc. is an agriculture-based entity which owns and operates four animal confinement feeding operations in Floyd County, Iowa. Michael Sinning is a certified confinement site manure applicator for H.E. Trettin, Inc.

2. On January 18, 2007, DNR Field Office 2 received an anonymous complaint alleging Michael Sinning was applying manure for H.E. Trettin, Inc. on the surface of a crop field within 750 feet of a residence. Jeremy Klatt, environmental specialist for DNR Field Office 2, investigated the complaint on the same day and measured the distance between the application area and the residence to be about 650 feet.

3. On January 23, 2007, Mr. Klatt issued a Notice of Violation letter to Michael Sinning for surface application of manure within 750 feet of a residence.

**CURRENT ENFORCEMENT HISTORY**

4. On May 5, 2008, DNR Field Office 2 received a complaint concerning manure application without a written agreement on acres in Section 29N, Rockford Township, Floyd County, Iowa. The complainant stated that manure was applied on hay ground on May 3, 2008 and not incorporated. The initial complaint identified the application area as NW ¼ Section 29N, Rockford Township, Floyd County, Iowa. Michelle Johnson, environmental specialist for DNR Field Office 2, investigated the complaint the same day it was received. Ms. Johnson drove by NW ¼ Section 29N, Rockford Township, but could not locate any manure application.

5. On May 8, 2008, Ms. Johnson called Michael Sinning to discuss the complaint. Mr. Sinning clarified the location of the application as the NE ¼ of the section, and not the NW ¼. Ms. Johnson explained the regulations regarding manure management plan (MMP) requirements and manure application. Mr. Sinning admitted that the acres on which he applied the manure were not in H.E. Trettin, Inc.'s current MMP. Ms. Johnson also visited H.E. Trettin, Inc.'s office and discussed the complaint with Harold Trettin and Kenny Trettin.

6. On May 9, 2008, Kenny Trettin contacted Ms. Johnson. Mr. Trettin explained that the manure came from their sow facility, ID #62246. Mr. Trettin stated that Mr. Sinning performs most of their manure application.

7. On May 12, 2008, Ms. Johnson identified the correct application field. Ms. Johnson measured the separation distance from the field to a nearby residence to be approximately 210 feet.

8. On May 15, 2008, Michael Sinning was issued a Notice of Violation letter

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for surface application of manure within 750 feet of a residence. The letter indicated that the matter was being referred for further enforcement. The letter was also sent to H.E. Trettin, Inc.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 chapter 65.

2. 567 IAC 65.3(3)"a" lists the separation distance requirements for land application of manure. A 750 foot separation distance from a residence must be met for liquid manure from a confinement feeding operation unless the manure is injected into or incorporated within the soil no later than 24 hours after the original application. The separation distance from the field in which Mr. Sinning applied manure to the residence was measured at approximately 210 feet. The manure was applied on hay ground and not incorporated. Moreover, the titleholder of the land did not execute a written waiver for the separation distance requirement. The above mentioned facts indicate a violation of this provision.

3. 567 IAC 65.17(8)"a" states that a MMP shall identify each farm where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available. Mr. Sinning applied manure to farm land that was not included in H.E. Trettin, Inc.'s MMP. The above mentioned facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Mr. Sinning agrees to do the following:

1. Pay an administrative penalty of \$1,500.00, within 60 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of

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penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$1,500.00. The administrative penalty is determined as follows:

Economic Benefit –Michael Sinning saved time by not checking with H.E. Trettn, Inc. to ensure the location of manure application was in the company's current MMP. Therefore, \$250.00 is assessed for this factor.

Gravity –One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. Therefore, \$1,000.00 is assessed for this factor.

Culpability - All commercial manure applicators have a duty to remain knowledgeable of the DNR's requirements. Mr. Sinning had previously been cited for surface application of manure within 750 feet of a residence. Despite this past history, Mr. Sinning committed the same violation again. Therefore, \$250.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Mr. Sinning. For that reason Mr. Sinning waives his rights to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 25 day of  
July, 2008.

  
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MICHAEL SINNING

Dated this 21 day of  
July, 2008.

No facility number; Kelli Book; Field Office 2; Gene Tinker; EPA; VIII.D.2.b

RECEIVED